

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN SENATE JUNE 26, 2008

AMENDED IN SENATE JUNE 16, 2008

AMENDED IN ASSEMBLY MAY 8, 2008

AMENDED IN ASSEMBLY APRIL 8, 2008

AMENDED IN ASSEMBLY MARCH 25, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2863

Introduced by Assembly Member Leno

February 22, 2008

An act to amend Sections 218 , 218.3, and 739.5 of, and to add Article 3 (commencing with Section 2868) to Chapter 9 of Part 2 of Division 1 of, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2863, as amended, Leno. Independent solar energy producers: master-meter customers.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. An electrical corporation is defined as including every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others. Existing law requires that, when gas or electric service is provided by a master-meter customer to users who are tenants

of a mobilehome park, apartment building, or similar residential complex, the master-meter customer charge each user at the same rate which would be applicable if the user were receiving gas or electricity directly from the gas or electrical corporation. Existing law creates further requirements for master-meter customers and for the corporations which provide service to them.

This bill would require a master-meter customer to charge each user a rate not to exceed the rate that would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation.

This bill would additionally create an exception from the definition of an “electrical corporation” for an independent solar energy producer, as defined.

(2) Existing law defines an “electric service provider” as an entity that offers electrical service to customers within the service territory of an electrical corporation, excluding electrical corporations, local publicly owned electric utilities, and certain cogenerators. Provisions of the existing Public Utilities Act restructuring the electrical services industry require that electric service providers register with the commission and provide for the authorization of direct transactions between electric service providers and end-use customers.

This bill would recast the existing definition and additionally create an exception for an independent solar energy producer ~~and for an association of a common interest development, providing electricity to its members or their tenants, pursuant to the bill’s provisions, as defined.~~

(3) This bill would require an independent solar energy producer contracting for the use or sale of electricity or the lease of a generation system to ~~a an entity or person or common interest development association,~~ for use in a residence to make certain disclosures to the buyer or lessee and to record ~~a document that contains notice of the contract~~ *Notice of an Independent Solar Energy Producer Contract and related documents*, as provided. *The bill would impose specific information requirements on independent solar energy producers, and would require those producers contracting for the use or sale of electricity or the use of a generation system to use only meters approved by the California Energy Commission. The bill would prohibit those producers so contracting from providing electricity for use on real property that does not also receive electric service from an electric utility. The bill would require all contracts for the sale of electricity by an independent solar energy producer to an entity or person for use in*

a residence to be made available to the Public Utilities Commission upon its request, and would provide for confidentiality of those contracts except as otherwise provided. The bill would require a master-meter customer of an electric utility who purchases electricity or leases a generation system from an independent solar energy producer, and who provides electric service to users who are tenants of a mobilehome park, apartment building, or similar residential complex, to charge each user of the electric service that is under a submetered system a rate for the solar generated electricity not to exceed the rate charged by the independent solar energy producer or the electric utility's rate for an equivalent amount of electricity, whichever is lower.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 218 of the Public Utilities Code is
2 amended to read:
3 218. (a) "Electrical corporation" includes every corporation
4 or person owning, controlling, operating, or managing any electric
5 plant for compensation within this state, except where electricity
6 is generated on or distributed by the producer through private
7 property solely for its own use or the use of its tenants and not for
8 sale or transmission to others.
9 (b) "Electrical corporation" does not include a corporation or
10 person employing cogeneration technology or producing power
11 from other than a conventional power source for the generation of
12 electricity solely for any one or more of the following purposes:
13 (1) Its own use or the use of its tenants.
14 (2) The use of or sale to not more than two other corporations
15 or persons solely for use on the real property on which the
16 electricity is generated or on real property immediately adjacent
17 thereto, unless there is an intervening public street constituting the
18 boundary between the real property on which the electricity is
19 generated and the immediately adjacent property and one or more
20 of the following applies:
21 (A) The real property on which the electricity is generated and
22 the immediately adjacent real property is not under common
23 ownership or control, or that common ownership or control was

1 gained solely for purposes of sale of the electricity so generated
2 and not for other business purposes.

3 (B) The useful thermal output of the facility generating the
4 electricity is not used on the immediately adjacent property for
5 petroleum production or refining.

6 (C) The electricity furnished to the immediately adjacent
7 property is not utilized by a subsidiary or affiliate of the corporation
8 or person generating the electricity.

9 (3) Sale or transmission to an electrical corporation or state or
10 local public agency, but not for sale or transmission to others,
11 unless the corporation or person is otherwise an electrical
12 corporation.

13 (c) “Electrical corporation” does not include a corporation or
14 person employing landfill gas technology for the generation of
15 electricity for any one or more of the following purposes:

16 (1) Its own use or the use of not more than two of its tenants
17 located on the real property on which the electricity is generated.

18 (2) The use of or sale to not more than two other corporations
19 or persons solely for use on the real property on which the
20 electricity is generated.

21 (3) Sale or transmission to an electrical corporation or state or
22 local public agency.

23 (d) “Electrical corporation” does not include a corporation or
24 person employing digester gas technology for the generation of
25 electricity for any one or more of the following purposes:

26 (1) Its own use or the use of not more than two of its tenants
27 located on the real property on which the electricity is generated.

28 (2) The use of or sale to not more than two other corporations
29 or persons solely for use on the real property on which the
30 electricity is generated.

31 (3) Sale or transmission to an electrical corporation or state or
32 local public agency, if the sale or transmission of the electricity
33 service to a retail customer is provided through the transmission
34 system of the existing local publicly owned electric utility or
35 electrical corporation of that retail customer.

36 (e) “Electrical corporation” does not include an independent
37 solar energy producer, ~~or an association of a common interest~~
38 ~~development, providing electricity to its members or their tenants,~~
39 ~~pursuant to as defined in Article 3 (commencing with Section~~
40 ~~2868) of Chapter 9 of Part 2.~~

(f) The amendments made to this section at the 1987 portion of the 1987–88 Regular Session of the Legislature do not apply to any corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity that physically produced electricity prior to January 1, 1989, and furnished that electricity to immediately adjacent real property for use thereon prior to January 1, 1989.

SEC. 2. Section 218.3 of the Public Utilities Code is amended to read:

218.3. (a) “Electric service provider” means an entity that offers electrical service to customers within the service territory of an electrical corporation and includes the unregulated affiliates and subsidiaries of an electrical corporation.

(b) “Electric service provider” does not include an entity that offers electrical service solely to service customer load consistent with subdivision (b) of Section 218, and does not include an electrical corporation or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility.

(c) “Electric service provider” does not include an independent solar energy producer, ~~or an association of a common interest development providing electricity to its members or their tenants, pursuant to as defined in Article 3 (commencing with Section 2868) of Chapter 9 of Part 2.~~

SEC. 3. Section 739.5 of the Public Utilities Code is amended to read:

739.5. (a) The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer shall charge each user of the service at a rate not to exceed the rate that would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation. The commission shall require the corporation furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level that will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed

1 the average cost that the corporation would have incurred in
2 providing comparable services directly to the users of the service.

3 (b) Every master-meter customer of a gas or electrical
4 corporation subject to subdivision (a) who, on or after January 1,
5 1978, receives any rebate from the corporation shall distribute to,
6 or credit to the account of, each current user served by the
7 master-meter customer that portion of the rebate which the amount
8 of gas or electricity, or both, consumed by the user during the last
9 billing period bears to the total amount furnished by the corporation
10 to the master-meter customer during that period.

11 (c) An electrical or gas corporation furnishing service to a
12 master-meter customer shall furnish to each user of the service
13 within a submetered system every public safety customer service
14 that it provides beyond the meter to its other residential customers.
15 The corporation shall furnish a list of those services to the
16 master-meter customer who shall post the list in a conspicuous
17 place accessible to all users. Every corporation shall provide these
18 public safety customer services to each user of electrical or gas
19 service under a submetered system without additional charge unless
20 the corporation has included the average cost of these services in
21 the rate differential provided to the master-meter customer on
22 January 1, 1984, in which case the commission shall deduct the
23 average cost of providing these public safety customer services
24 when approving rate differentials for master-meter customers.

25 (d) Every master-meter customer is responsible for maintenance
26 and repair of its submeter facilities beyond the master-meter, and
27 nothing in this section requires an electrical or gas corporation to
28 make repairs to or perform maintenance on the submeter system.

29 (e) Every master-meter customer shall provide an itemized
30 billing of charges for electricity or gas, or both, to each individual
31 user generally in accordance with the form and content of bills of
32 the corporation to its residential customers, including, but not
33 limited to, the opening and closing readings for the meter, and the
34 identification of all rates and quantities attributable to each block
35 in the applicable rate structure. The master-meter customer shall
36 also post, in a conspicuous place, the applicable prevailing
37 residential gas or electrical rate schedule, as published by the
38 corporation.

1 (f) The commission shall require that every electrical and gas
2 corporation shall notify each master-meter customer of its
3 responsibilities to its users under this section.

4 (g) The commission shall accept and respond to complaints
5 concerning the requirements of this section through the consumer
6 affairs branch, in addition to any other staff that the commission
7 deems necessary to assist the complainant. In responding to the
8 complaint, the commission shall consider the role that the office
9 of the county sealer in the complainant's county of residence may
10 have in helping to resolve the complaint and, where appropriate,
11 coordinate with that office.

12 SEC. 4. Article 3 (commencing with Section 2868) is added
13 to Chapter 9 of Part 2 of Division 1 of the Public Utilities Code,
14 to read:

15
16 Article 3. Independent Solar Energy Producers
17

18 2868. The following definitions shall apply for purposes of
19 this article:

20 ~~(a) "Association of a common interest development" means a~~
21 ~~nonprofit corporation or unincorporated association created for~~
22 ~~the purpose of managing a common interest development as~~
23 ~~defined in subdivision (e) of Section 1351 of the Civil Code.~~

24 ~~(b)~~
25 (a) "Electric utility" means an electrical corporation as defined
26 in Section 218, a local publicly owned electric utility as defined
27 in Section 9604, or an electrical cooperative as defined in Section
28 2776.

29 ~~(c)~~
30 (b) "Generation system" means any configuration of
31 photovoltaic generation that has a single interconnection with the
32 electric utility transmission or distribution network.

33 ~~(d)~~
34 (c) "Independent solar energy producer" means a corporation
35 or person employing one or more photovoltaic generation systems
36 for the generation of electricity for any one or more of the
37 following purposes:

- 38 (1) Its own use or the use of its tenants.
39 (2) The use of, or sale to, not more than two other ~~corporations~~
40 *entities* or persons per generation system solely for use on the real

1 property on which the electricity is generated, or on real property
2 immediately adjacent thereto.

3 ~~(e)~~

4 ~~(d)~~ “Real property” means a single parcel of land.

5 2869. (a) ~~(1)~~ An independent solar energy producer
6 contracting for the *use or* sale of electricity or the lease of a
7 generation system, to ~~a an entity or person, or an association of a~~
8 ~~common interest development~~, for use in a residence shall include
9 a disclosure to the buyer or lessee that, at a minimum, includes all
10 of the following:

11 ~~(1)~~

12 (A) A good faith estimate of the kilowatthours to be delivered
13 by the generation system.

14 ~~(2)~~

15 (B) A plain language explanation of the terms under which the
16 pricing will be calculated over the life of the contract and a good
17 faith estimate of the price per kilowatthour.

18 ~~(3)~~

19 (C) A plain language explanation of operation and maintenance
20 responsibilities of the contract parties.

21 *(D) A plain language explanation of the contract provisions*
22 *regulating the disposition or transfer of the contract in the event*
23 *of a transfer of ownership of the residence, as well as the costs or*
24 *potential costs associated with the disposition or transfer of the*
25 *contract.*

26 ~~(4)~~

27 (E) A plain language explanation of the disposition of the
28 generation system at the end of the term of the contract.

29 *(2) The Public Utilities Commission may require, as a condition*
30 *of receiving ratepayer funded incentives, that an independent solar*
31 *energy producer provide additional disclosure to the buyer or*
32 *lessee the commission, or both.*

33 (b) An independent solar energy producer contracting for the
34 *use or* sale of electricity or the lease of a generation system, to ~~a~~
35 ~~an entity or person, or an association of a common interest~~
36 ~~development~~, for use in a residence shall record a ~~notice of that~~
37 ~~contract~~ *Notice of an Independent Solar Energy Producer Contract,*
38 *within 30 days of the signing of the contract,* against the title to
39 the real property on which the electricity is generated, and against
40 the title to any adjacent real property on which the electricity will

be used, in the office of the county recorder for the county in which the real property is located. The notice shall ~~include the name, address, and telephone number of the independent solar energy producer, identify whether the contract is a contract for the sale of electricity or the lease of a generation system, and provide the dates on which the contract commences and terminates.~~ include, but is not limited to, all of the following:

(1) A prominent title at the top of the document in 14-point type stating “Notice of an Independent Solar Energy Producer Contract” and the following statement:

“This real property is receiving part of its electric service from an independent solar energy producer that has retained ownership of a solar electric generation system that may be sited on the real property or an adjacent real property. The independent solar energy producer provides electric service to the current owner of this real property through a long-term contract for electric service. In the event of a transfer of ownership of this real property, the benefits and obligations of the contract for electric service to which the current owner has agreed must be transferred to the next owner or terminated by the current owner pursuant to the terms of the contract and prior to, or concurrent with, any transfer of ownership of this real property. With the written permission of the current owner of this real property, the independent solar energy producer is required to provide a copy of the contract to a prospective buyer of the real property and move with reasonable haste to conclude the transfer or disposition of the contract so as to facilitate the timely sale or transfer of the real property.”

(2) The address and assessor’s parcel number of the real property against which the notice is recorded.

(3) The name, address, and telephone number of the independent solar energy producer, and any other contact information deemed necessary by the independent solar energy producer.

(4) A statement identifying whether the contract is a contract for the sale of electricity or for the lease of a generation system, and providing the dates on which the contract commences and terminates.

(c) (1) The recorded Notice of an Independent Solar Energy Producer Contract does not constitute a title defect, lien, or encumbrance against the real property, and the independent solar energy producer shall be solely responsible for the accuracy of

1 the information provided in the notice and for recording the
2 document with the county recorder.

3 (2) The independent solar energy producer shall record a
4 subsequent document extinguishing the Notice of an Independent
5 Solar Energy Producer Contract if the contract is voided,
6 terminated, sold, or transferred. If the independent solar energy
7 producer transfers its obligation under the contract or changes
8 its contact information, it shall record a new notice reflecting these
9 changes within 30 days of their occurrence.

10 (3) Within 30 days of the termination of a contract for the use
11 or sale of electricity or the lease of a generation system, the
12 independent solar energy producer shall record a subsequent
13 document extinguishing the Notice of an Independent Solar Energy
14 Producer Contract from the title to the real property on which the
15 electricity is generated, and from the title to any adjacent real
16 property on which the electricity was used, in the office of the
17 county recorder for the county in which the real property is located.

18 (d) When an independent solar energy producer is contacted
19 by the owner of real property on which the independent solar
20 energy producer owns a generation system or provides electricity
21 for use or sale, or is contacted by a prospective buyer of that real
22 property with the written consent of the owner, the independent
23 solar energy producer shall provide within 10 days a copy of the
24 existing contract for the use or sale of electricity and any disclosure
25 required by subdivision (a), and shall move with reasonable haste
26 to conclude the transfer or disposition of the contract for the use
27 or sale of electricity so as to facilitate the timely sale or transfer
28 of the real property.

29 (e) An independent solar energy producer contracting for the
30 use or sale of electricity or the lease of a generation system shall
31 use only meters approved by the California Energy Commission,
32 and shall not provide electricity for use on real property that does
33 not also receive electric service from an electric utility.

34 (f) (1) All contracts for the sale of electricity by an independent
35 solar energy producer to an entity or person, for use in a
36 residential dwelling shall be made available to the Public Utilities
37 Commission upon its request, and shall be confidential. The
38 disclosures required by subdivision (a) may be made open to public
39 inspection or made public only by the Public Utilities Commission.

1 (2) *A contract provided to the Public Utilities Commission*
2 *pursuant to this subdivision shall not be open to public inspection*
3 *or made public, except on order of the Public Utilities Commission,*
4 *or by the Public Utilities commission or a commissioner in the*
5 *course of a hearing or proceeding.*

6 (3) *This subdivision does not eliminate or modify any rule or*
7 *provision of law that provides for the confidentiality of information*
8 *submitted to the Public Utilities Commission in the course of its*
9 *proceedings.*

10 ~~(e)~~

11 (g) A master-meter customer of an electric utility who purchases
12 electricity or leases a generation system from an independent solar
13 energy producer, and who provides electric service to users who
14 are tenants of a mobilehome park, apartment building, or similar
15 residential complex, shall do both of the following:

16 (1) Charge each user of the electric service that is under a
17 submetered system a rate for the solar generated electricity not to
18 exceed the rate charged by the independent solar energy producer
19 or the electric utility's rate for an equivalent amount of electricity,
20 whichever is lower.

21 (2) Comply with the provisions of Section 739.5 or 12821.5,
22 and any rules set forth by an electric utility for master-meter
23 customers.